

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LARRY WALTER VARVEL,	:	CIVIL NO. 3:14-CV-1759
	:	
Plaintiff	:	(Judge Munley)
	:	
v.	:	
	:	
TODD HOOVER, DAUPHIN PRISON,	:	
	:	
Defendants	:	

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MEMORANDUM

On September 10, 2014, Larry Walter Varvel ("Varvel"), an inmate currently incarcerated at the Dauphin County Prison, commenced this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). Named as defendants are Judge Todd Hoover ("Judge Hoover") and the Dauphin County Prison. He seeks to proceed *in forma pauperis*. (Doc. 2). Obligatory preliminary screening reveals that the complaint is subject to dismissal pursuant to 28 U.S.C. §1915(e)(2)(B)(i), (ii) and (iii).

I. Standards of Review

Section 1915(e)(2)(B) states, in pertinent part, "the court shall dismiss the case at any time if the court determines that the action "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from suit." 28 U.S.C. §1915(e)(2)(B)(i) - (iii). An action is frivolous if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490

U.S. 319, 325 (1989). A court may dismiss a complaint as frivolous if it is “based on an indisputably meritless legal theory” or a “clearly baseless” or “fantastic or delusional” factual scenario. Neitzke, 490 at 327–28; Wilson v. Rackmill, 878 F.2d 772, 774 (3d Cir. 1989). The applicable standard of review for the failure to state a claim provision is the same as the standard for a motion pursuant to 12(b)(6) of the Federal Rules of Civil Procedure. Rule 12(b)(6) provides for the dismissal of complaints that fail to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). When ruling on a Rule 12(b)(6) motion, the court must “accept as true all [factual] allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff.” Kanter v. Barella, 489 F.3d 170, 177 (3d Cir. 2007) (quoting Evancho v. Fisher, 423 F.3d 347, 350 (3d Cir. 2005)). Although the court is generally limited in its review to the facts contained in the complaint, it “may also consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case.” Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n. 2 (3d Cir. 1994); see also In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997).

Federal notice and pleading rules require the complaint to provide “the defendant notice of what the . . . claim is and the grounds upon which it rests.” Phillips v. Cty. of Allegheny, 515 F.3d 224, 232 (3d Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). To test the sufficiency of the complaint in the face of a Rule 12(b)(6) motion, the court must conduct a three-step inquiry. See Santiago v. Warminster

Twp., 629 F.3d 121, 130-31 (3d Cir. 2010). In the first step, “the court must ‘tak[e] note of the elements a plaintiff must plead to state a claim.’” Id. (quoting Ashcroft v. Iqbal, 556 U.S. 662, 675 (2009)). Next, the factual and legal elements of a claim should be separated; well-pleaded facts must be accepted as true, while mere legal conclusions may be disregarded. Id.; see also Fowler v. UPMC Shadyside, 578 F.3d 203, 210–11 (3d Cir. 2009). Once the well-pleaded factual allegations have been isolated, the court must determine whether they are sufficient to show a “plausible claim for relief.” Iqbal, 556U.S. at 679 (citing Twombly, 550 U.S. at 556); Twombly, 550 U.S. at 555 (requiring plaintiffs to allege facts sufficient to “raise a right to relief above the speculative level”). A claim “has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678.

II. Allegations of the Complaint

Varvel alleges that he was unlawfully imprisoned in the Dauphin County Prison by Judge Hoover for thirty-six days. (Doc. 1, at 2). “On 3-16-14 Judge Todd Hoover sentenced [him] to 8 month 11 day’s [sic] but made [him] stay in prison for 9 month [sic] 17 day’s [sic] from 12-11-13 to 9-28-14.” (Id.) He is seeking monetary damages. (Id. at 3).

III. Discussion

Section 1983 of Title 42 of the United States Code offers private citizens a cause of action for violations of federal law by state officials. See 42 U.S.C. § 1983. The

statute provides, in pertinent part, as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Id.; see also Gonzaga Univ. v. Doe, 536 U.S. 273, 284-85 (2002); Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996). To state a claim under § 1983, a plaintiff must allege “the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988). Thus, § 1983 limits liability to persons who violate constitutional rights.

Varvel has named the Dauphin County Prison as a defendant. However, a county jail is not a proper defendant in a § 1983 action because it is not a person and therefore, not subject to suit under 42 U.S.C. § 1983. See Fischer v. Cahill, 474 F.2d 991, 992 (3d Cir. 1973) (holding that a “state agency may not be sued under 42 U.S.C. § 1983 since it is not a person”); Nesmith v. Beaver County Jail, Civ. A. No. 11–388, 2012 WL 3245495 at *11 (W.D.Pa. Aug.8, 2012) (finding that the jail is not an entity that is properly subject to suit and would be dismissed as a defendant even if complaint was not deficient.) The complaint against the Dauphin County Prison is therefore subject to dismissal.

With respect to Judge Hoover, judges are protected by absolute immunity for all

judicial acts except those made in the clear absence of jurisdiction. “Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts within their judicial jurisdiction.” Cleavinger v. Saxner, 474 U.S. 193, 199 (1985); Capogrosso v. The Supreme Court of New Jersey, 588 F.3d 180, 185 (3d Cir. 2009). Judicial immunity provides complete immunity from suit, not merely from an ultimate assessment of damages. Mireles v. Waco, 502 U.S. 9, 11 (1991). A judge is entitled to immunity even where “the action he took was in error, was done maliciously, or was in excess of his authority; rather he will be subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’ ” Stump v. Sparkman, 435 U.S. 349, 356–67 (1978). Varvel’s allegations clearly relate to acts taken by Judge Hoover in his judicial capacity. For the above reasons, the court finds that the claim against Judge Hoover has no arguable basis in law or in fact and will be dismissed as frivolous and by reason of judicial immunity pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (iii).

IV. Leave to Amend

“In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave [to amend] sought should, as the rules require, be freely given.” Foman v. Davis, 371 U.S. 178, 182 (1962) (interpreting Federal Rules of Civil Procedure); FED. R. CIV. P. 15(a)(2). Based upon the allegations that Judge Hoover is responsible for him being incarcerated an additional thirty-six days beyond his sentence, it is clear that affording any plaintiff any opportunity

to amend would be futile.

IV. Conclusion

For the reasons set forth above, the complaint (Doc. 1) will be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(i), (ii) and (iii).

An appropriate order will issue.

BY THE COURT:

s/James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court

Dated: September 24, 2014